

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Luis Alberto Diaz-Cenac,

Plaintiff

Case No. 3:05CV7289  
(3:04cr732)

v.

ORDER

United States of America,

Defendant

This is a petition under 28 U.S.C. § 2255. The petitioner claims that his attorney failed, despite his instruction to him to do so, to file a notice of appeal.

The government has submitted an affidavit by the attorney, in which he details his post-sentencing discussions with the petitioner and his girlfriend. According to the attorney, the petitioner did not ask him to file a notice of appeal.

I find the attorney's affidavit to be entirely credible, particularly in view of the absence of an affidavit from the petitioner's girlfriend disputing the attorney's account of his discussions with her and the petitioner.

I find, on the basis of the record before me, that the petitioner did not ask his attorney to file a notice of appeal.

It is, accordingly,

ORDERED THAT the petition for relief under 28 U.S.C. § 2255 be, and the same hereby is denied.

Further, the court certifies, pursuant to 28 U.S.C. §1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

So ordered.

s/James G. Carr  
James G. Carr  
Chief Judge